

--BEFORE THE FEDERAL COMMUNICATIONS COMMISSION--

Washington, D.C. 20554

In the matter of Unbundled Access to)	
Network Elements)	
Review of the Section 251 Unbundling)	WC Docket No. 04-313
Obligations of Incumbent Local Exchange)	
Carriers)	CC Docket No. 01-338

COMMENTS OF THE UTAH PUBLIC SERVICE COMMISSION

October 4, 2004

The Utah Public Service Commission (PSC) respectfully submits its comments concerning the “Order and Notice of Proposed Rulemaking” WC Docket 04-313, CC Docket No. 01-338 released August 20, 2004. The PSC provides comments on the issues it believes to be of critical importance. Overall, the PSC believes that UNE-P is critical for the continued development and preservation of competition in the telecommunications market within the State of Utah. Further, the PSC recommends that the wire center be used as the unit of measurement for any impairment analysis.

I - UTAH HISTORY: TRIENNIAL REVIEW ORDER PROCEEDINGS

The following briefly summarizes the actions taken by the PSC in response to the FCC’s Triennial Review Order (TRO) proceedings. The PSC opened a Docket to address the issues raised by the FCC’s TRO Order. Investigatory staff issued interrogatories to the competitors and the incumbent that, in general, inquired into information concerning switching, customers, access lines, and other technical questions. Contemporaneously, Qwest filed testimony, and rebuttal testimony was filed by numerous competitors operating in Utah. When the District Court issued a stay to the FCC’s TRO, the PSC determined that further analysis was not warranted. Therefore the reply testimony filings by the PSC’s advocacy staff were postponed. In response to the stay, the PSC conducted a technical conference where it decided that as a result of the scarce resources of all participating parties, all investigation would be suspended until the stay was lifted. As a consequence, a record of verified evidence within the State of Utah was not established.

II - THE CRITICAL NATURE OF UNE-P TO MARKET DEVELOPMENT

The PSC believes that the effect of the transitory UNE-P phase out and, ultimately, the eradication of UNE-P may well be to significantly hinder competition in the Utah telecommunications market. The elimination of UNE-P, especially within the residential market, may reverse the progress competitors have made in the Utah market. The resulting lack of competition may well result in the (potentially monopolistic) incumbent regaining the

majority (or all) of the residential access lines. For many competitors, it may not be economically feasible to stay in the market if UNE-P as a market entry option is eliminated.

III - THE WIRE CENTER: THE APPROPRIATE TOOL FOR EXAMINATION

In response to the FCC's request for comment on the relevant geographic market, it is the PSC's position that the appropriate telecommunication market definition should be the boundaries for each wire center. The wire center is the natural administrative unit for which most of the telecommunication data is collected and analyzed and, most importantly, best indicates where CLEC's are actually serving customers. Conversely, data for MSA's, if collected and analyzed, is simply data collected by wire center and then aggregated.

In Utah, the wire centers are generally used as the proper market boundaries in most of the analysis conduct by or for the PSC . Qwest's wire centers, for instance, have been used as the basis for the company's previous filings for pricing flexibility, and are also used as the benchmark for the Utah PSC's Annual Report to the Legislature, tariffs filings, universal service and collocation. The wire center is therefore the most practical and efficient mode of analysis used in Utah. A further weakness of using the MSA is that Utah's MSAs follow county boundaries. In each of the MSAs in Utah all three of the de-averaged pricing zones are present. In Utah there has been very different rates of competitive entry across the de-averaged zones.